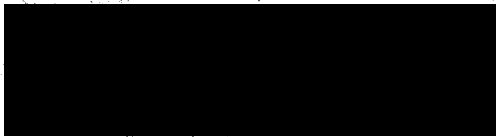




U.S. Citizenship
and Immigration
Services



FILE:

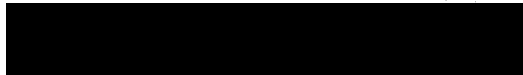


Office: VERMONT SERVICE CENTER

Date: OCT 28 2004

IN RE:

Applicant:



APPLICATION:

Application for Temporary Protected Status under Section 244 of the Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:

Self-represented

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

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DISCUSSION: The application was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who is seeking Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director determined that the applicant: (1) failed to establish that he had continuously resided in the United States since February 13, 2001; (2) failed to establish that he had been continuously physically present in the United States from March 9, 2001 to the date of filing the TPS application; and (3) had been convicted of two or more misdemeanors committed in the United States. The director, therefore, denied the application.

On appeal, the applicant states that he has been physically present in the United States in a continuous manner since February 13, 2001. He further states that he has only one misdemeanor conviction as an adult, that "disorderly conduct" is a violation, and that all other convictions are "youthful offender" and are sealed. The applicant submits additional evidence.

Section 244(c) of the Act, and the related regulations in 8 C.F.R. § 244.2, provide that an alien who is a national of a foreign state designated by the Attorney General is eligible for temporary protected status only if such alien establishes that he or she:

- (a) Is a national, as defined in section 101(a)(21) of the Act, of a foreign state designated under section 244(b) of the Act;
- (b) Has been continuously physically present in the United States since the effective date of the most recent designation of that foreign state;
- (c) Has continuously resided in the United States since such date as the Attorney General may designate;
- (d) Is admissible as an immigrant except as provided under section 244.3;
- (e) Is not ineligible under 8 C.F.R. § 244.4; and
- (f)
 - (1) Registers for TPS during the initial registration period announced by public notice in the *Federal Register*, or
 - (2) During any subsequent extension of such designation if at the time of the initial registration period:
 - (i) The applicant is a nonimmigrant or has been granted voluntary departure status or any relief from removal;
 - (ii) The applicant has an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal which is pending or subject to further review or appeal;

(iii) The applicant is a parolee or has a pending request for reparole; or

(iv) The applicant is a spouse or child of an alien currently eligible to be a TPS registrant.

- (g) Has filed an application for late registration with the appropriate Service director within a 60-day period immediately following the expiration or termination of condition described in paragraph (f)(2) of this section.

The term *continuously resided*, as defined in 8 C.F.R. § 244.1, means residing in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence as defined within this section or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

The term *continuously physically present*, as defined in 8 C.F.R. § 244.1, means actual physical presence in the United States for the entire period specified in the regulations. An alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences as defined within this section.

Persons applying for TPS offered to El Salvadorans must demonstrate entry on or prior to February 13, 2001, continuous residence in the United States since February 13, 2001, and continuous physical presence in the United States since March 9, 2001. On July 9, 2002, the Attorney General announced an extension of the TPS designation until September 9, 2003. A subsequent extension of the TPS designation has been granted by the Secretary of the Department of Homeland Security, with validity until March 9, 2005, upon the applicant's re-registration during the requisite time period.

The first issue in this proceeding is whether the applicant has established his continuous residence in the United States since February 13, 2001, and his continuous physical presence from March 9, 2001, to the date of filing his TPS application.

The applicant filed his TPS application on January 28, 2002. On June 10, 2002, the applicant was requested to submit additional evidence establishing his continuous residence in the United States since February 13, 2001, and continuous physical presence from March 9, 2001 to the date of filing the TPS application. The director noted that information submitted by the applicant, in response to his request for additional evidence, was dated entirely in the year 2002. He, therefore, denied the application.

On appeal, the applicant submits the following:

1. A copy of a court record from the First District Court of Nassau County, New York, reflecting an arrest date of April 23, 1997.
2. A Certificate of Disposition from the County Court of the State of New York, County of Nassau, reflecting an arrest date of January 9, 2000.

3. A joint statement dated May 21, 2000, from Rev. [REDACTED] Spiritual Director, and Mr. [REDACTED] Young Adult Advisor, of Our Lady of Loretto Church, confirming that the applicant is enrolled in their young adult group.
4. A statement in the Spanish language, dated May 22, 2000, from [REDACTED] No English translation accompanied this statement.
5. Verizon statements under the name of the applicant for the period July 1 to July 31, 2001.
6. An "IPP Payment Record" for the payment of a Verizon (Bell Atlantic) bill dated July 19, 2001. No name is listed on this payment record.
7. IRS Form W-2 Wage and Tax Statements for the years 2001 and 2002, reflecting the employer's name as Grassco Landscaping, Inc.
8. Form 1040A Individual Income Tax Return for the years 2001 and 2002.
9. An undated and unsigned statement from [REDACTED] indicating that the applicant is employed by Grassco Landscaping, with a pay rate of \$300 per week.
10. A copy of a statement, dated November 8, 2002, from Msgr. [REDACTED] of the Parish of Our Lady of Loretto, Hempstead, New York, indicating that the applicant is a registered parishioner of the church for over three years.
11. Sprint PCS receipt dated November 25, 2002.
12. Cablevision receipt dated January 31, 2003.
13. Another statement, dated March 14, 2003, from Msgr. [REDACTED] indicating that the applicant had been a registered parishioner of the church for over four years.
14. Another statement, dated March 15, 2003, from Msgr. [REDACTED] indicating that the applicant had been a member of the youth group since 1999, he had attended every weekly meeting, and he was a very well-known member of their community.

The evidence furnished by the applicant on appeal, in conjunction with other evidence included in the record of proceeding, establishes that the applicant satisfies the residence and physical presence requirements described in 8 C.F.R. § 244.2(b) and (c). Therefore, the applicant has overcome these findings of the director.

The second issue in this proceeding is whether the applicant has been convicted of two or more misdemeanors committed in the United States.

Pursuant to section 244(c)(2)(B)(i) of the Act and the related regulations in 8 C.F.R. § 244.4(a), an alien shall not be eligible for temporary protected status if the Attorney General, now, the Secretary of the Department of Homeland Security (the Secretary), finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States.

8 C.F.R. § 244.1 defines "felony" and "misdemeanor."

Felony means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the State as a misdemeanor, and the sentence actually imposed is one year or less regardless of the term such alien actually served. Under this exception for purposes of section 244 of the Act, the crime shall be treated as a misdemeanor.

Misdemeanor means a crime committed in the United States, either:

- (1) Punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or
- (2) A crime treated as a misdemeanor under the term "felony" of this section.

For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a felony or misdemeanor.

The record reflects the following:

1. On May 23, 1997, in the First District Court of Nassau County, New York, the applicant was convicted of disorderly conduct, in violation of 240.20 Penal Law (PL). He was sentenced to one year conditional discharge, 10 hours of community service, and \$150 in fines and court costs.

The applicant asserts that disorderly conduct is not a misdemeanor but, rather, a violation. However, according to section 10.00(3) of the New York State Penal Law, "violation" means an offense which can carry a sentence of imprisonment for up to fifteen days. Consequently, disorderly conduct is considered a misdemeanor for immigration purposes as defined by 8 C.F.R. § 244.1.

2. The Federal Bureau of Investigation (FBI) report shows that on January 29, 1999, the applicant was convicted of criminal possession of stolen property. He was sentenced to 90 days in prison. A letter from Perini & Hoerger, Attorneys at Law, confirms that on March 26, 1999, the applicant was sentenced to 90 days in jail for the conviction of criminal possession of stolen property, a Class A misdemeanor.

3. The FBI report shows that on October 30, 2000, the applicant was arrested and charged with illegal alien in possession of a weapon, in violation of 18 U.S.C. § 922(g)(5)(a), a felony offense. The court disposition of this charge is not contained in the record. The letter from Perini & Hoerger indicates that the applicant pled guilty to the charge, he received Youthful Offender treatment on the case, and served one year in the Nassau County jail. The applicant, however, failed to submit the actual court disposition of this felony offense; nor is there evidence that the applicant was adjudicated a Youthful Offender.

4. On January 8, 2002, in the District Court of Nassau County, New York, the applicant pled guilty to "false personation," in violation of 190.23 PL, a misdemeanor. He was sentenced to "70 days N.C.C.C." The applicant was adjudicated a Youthful Offender by the judge, and the case was subsequently dismissed and sealed.

The Board of Immigration Appeals, in *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000), held that adjudication of youthful offender status or juvenile delinquency is not a conviction for immigration purposes). The applicant, therefore, was not convicted of this offense.

5. The applicant submits a Certificate of Disposition-Dismissal, issued by the County Court of the State of New York, County of Nassau, indicating that Indictment No. [REDACTED] date of arrest of January 9, 2000, was dismissed by the Grand Jury on June 14, 2000. However, there is nothing in the certificate to indicate what offense the applicant was arrested, or that it pertains to any of the arrests and/or convictions listed in Nos. 1 to 4 above.

Accordingly, the applicant is ineligible for TPS, pursuant to section 244(c)(2)(B)(i) of the Act, based on his record of at least two misdemeanor convictions (Nos. 1 and 2 above), and because he failed to comply to the director's request to submit the final court dispositions of all his arrests, including the felony arrest listed in No. 3 above. There is no waiver available to an alien convicted of a felony or two or more misdemeanors committed in the United States. Accordingly, the director's decision to deny the TPS application will be affirmed.

The burden of proof is upon the applicant to establish that she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden. The appeal will be dismissed.

ORDER: The appeal is dismissed.